THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION Nos.18688 and 18861 of 2004

Dated: 25th June 2007

W.P.No.18688 of 2004:

Between:

M.A. Khadeer and two others.

.. Petitioners

And

State of A.P. rep. by Mandal Revenue Officer,
Vijayawada Urban, Krishna District.

.. Respondent

and another case.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION Nos.18688 and 18861 of 2004

COMMON ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

Since common facts and circumstances arise in these two Writ Petitions, they are taken up together for disposal.

The petitioners in W.P.No.18688 of 2004, who are the respondents in the Courts below against whom the proceedings under the provisions of the A.P. Land Grabbing (Prohibition) Act (for brevity "the Act") was initiated, filed this Writ Petition seeking a writ of Certiorari assailing the order dated 20.08.2004 in L.G.A.No.5 of 2002 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad allowing the appeal at the instance of the respondent herein as against the orders of dismissal dated 23.06.2000 in L.G.O.P.No.166 of 1993 on the file of the Special Tribunal-cum-District Judge, Krishna at Machilipatnam.

Heard Sri T.S. Anand, learned counsel appearing for the

petitioners and the learned Government Pleader for Revenue (Assignment) appearing for the respondent in both the cases.

Briefly stated the facts in W.P.No.18688 of 2004, which arise for consideration in this case, are that in an application filed under sub-section (1) of Section 7-A of the Act, the respondent herein sought declaration that the petitioners herein are the land grabbers in respect of the schedule land to an extent of 83 sq.yards equal to 69 sq.mts. in New T.S.No.17/1A1A correlated to new T.S.No.26 of Vijayawada Urban, Krishna District classified as Hill Poramboke. Further, it was stated that the petitioners herein purchased an extent of 124.4 sq.yards under a registered sale deed dated 02.07.1981 and also another site to an extent of 249 sq.yards under a document No.4545/81 dated 20.05.1981 and also got an extent of 373 sq.yards and out of which, 112 sq. yards was sold by the first petitioner herein under a registered sale deed dated 03.12.1983 and the patta land of the petitioners is 261.4 sq.yards. It was further stated that the petitioners are in possession and enjoyment of an extent of 344 sq.yards and out of which, 261.4 sq.yards is patta and the balance of 83 sq.yards is part of Gandhi Hill and the petitioners have grabbed said extent of 83 sq.yards or 69 sq.mts and they have no title to the schedule property. Hence, the application.

Contesting the case of the respondent herein, the case of the petitioners in the counter-affidavit was that of denial as to the title of the respondent and further set up their own title independently to the effect that the mother of first petitioner by name Hajia Amjadunnusa gifted 249 sq.yards of site with a tiled house under a registered gift deed dated 07.05.1981 and she also purchased a part of 249 sq. yards under a registered sale deed dated 05.11.1957 from Syed Mastan Saheb and also got some property from Hajia Karimunnisa under an exchange deed dated 24.02.1972. It was further stated that the first petitioner got an extent of 124.4 sq. yards under a registered sale deed dated 11.06.1981 and this petitioner and his predecessors-in-title have been in possession and enjoyment of the property from a long time and there was no objection at all in their possession and they have also perfected their title by adverse possession.

With these and other allegations, the special Tribunal framed the issues and both the sides went into trial wherein on behalf of the respondent herein, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked whereas on behalf of the petitioners herein, R.Ws.1 and 2 were examined and Exs.B.1 to B.46 were marked.

The petitioner in W.P.No.18861 of 2004, who is the respondent in the Courts below against whom the proceedings under the

provisions of the A.P. Land Grabbing (Prohibition) Act (for brevity "the Act") was initiated, filed this Writ Petition seeking a writ of Certiorari assailing the order dated 20.08.2004 in L.G.A.No.8 of 2002 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad allowing the appeal at the instance of the respondent herein as against the orders of dismissal dated 23.06.2000 in L.G.O.P.No.167 of 1993 on the file of the Special Tribunal-cum-District Judge, Krishna at Machilipatnam.

Briefly stated the facts in W.P.No.18861 of 2004, which arise for consideration in this case, are that in an application filed under sub-section (1) of Section 7-A of the Act, the respondent herein sought declaration that the petitioner herein is the land grabber in respect of the schedule land to an extent of 22 sq. yards equal in New NTS. No.17/1A1A of Vijayawada Town, which is classified as Poramboke. Further, it was stated that the petitioner herein purchased an extent of 112 sq. yards under a registered document dated 08.12.1983 from his brother M.A. Khadeer but he was found to be in possession of 134 sq. yards on which he constructed one storied building and only an extent of 112 sq. yards is his patta site and the remaining 22 sq. yards is the encroached land and thus, the petitioner grabbed an extent of 22 sq. yards. Hence, the application.

Contesting the case of the respondent herein, the case of the

petitioner in the counter-affidavit was that of total denial as to the title of the respondent and further set up his own title independently to the effect that he purchased 112 sq. yards of site with a terraced and tiled construction therein by a registered gift deed dated 03.12.1983 from M.A. Khadeer and the said M.A.Khadeer got the land through a gift. It was further stated that one Hazia Azizadunnisa Begum, who is the mother of the petitioner, gifted 249 sq. yards of site with a tiled house through a registered gift deed dtd.07.05.1982 to her youngest son M.A. Khadeer and the said Azizadunnisa Begum in turn got the said property by two separate documents and she partly got the said property by a registered exchange deed dtd.24.02.1972 from Hazia Kareemunnisa and partly by a registered sale deed dtd.05.11.1957 from Syed Mastan Saheb. It was further stated that both the properties of the petitioner were acquired by his predecessors-in-title long ago and he has also perfected his title by adverse possession.

With these and other allegations, the special Tribunal framed the issues and both the sides went into trial wherein on behalf of the respondent herein, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked whereas on behalf of the petitioners herein, R.W.1 was examined and Exs.B.1 to B.21 were marked.

On appraisal of the evidence in both these cases, the special

Tribunal initially did not find favour with the cases as set forth by the respondent/applicant holding that they have failed to establish their right, title and interest over the schedule property and dismissed the same whereas on appeals by the respondent herein, the appellate Court namely the special Court on re-appraisal of the evidence and the material on record afresh, after framing of the points, which arise for consideration and by taking note of the documents on behalf of the respondent herein/applicant especially Ex.A.1-adangal, Ex.A.2-sketch, Ex.A.3 plan and Ex.A.4-extract from TSLR and also on considering the evidence of the other witnesses held that the special Tribunal was not right in holding that the respondents did not establish their title. It had taken note of the fact that the special Tribunal while approaching the said question, proceeded on the premise that the respondents are trying to fill up the lacunae by resorting to Ex.A.4-copy of TSLR, which is turned out to be a suspicious document whereas it has come to the light that Ex.A.1 was not in the custody of the special Tribunal, which has been referred to in a decision reported in ***Abdul Khuddus vs. State of A.P.***[1] and therefore, such approach is not correct. It has been pointed out that there was no such attempt on the part of the petitioners herein to assail that the said document is not genuine. On a well considered and reasoned order by referring to the evidence and

the material on record, ultimately it was held that the respondent has proved its title whereas in regard to the case as set forth by the petitioners herein, the same was not accepted mainly on the ground that there is no proper discharge of burden especially in regard to the title of the predecessors or their possession. It is a categorical finding by the special Court that there is no evidence that the petitioners and their predecessors-in-title have been in possession and enjoyment of the schedule property prior to 1980 and the alleged tax receipts would not in any way confer any title. Every doubt has been turned against the petitioners herein as to how they acquired the schedule property. Having regard to such finding of fact as arrived at by the special Court, which is squarely based on the relevant and cogent evidence and material, we do not find any perversity in its approach nor we find any different reason to differ with the conclusions as arrived at by the special Court. In view of the same, it is not open to this Court to interfere with the same by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

These two Writ Petitions are dismissed. No costs.

B. PRAKASH RAO, J

G. BHAVANI PRASAD, J

25th June 2007.
Chvn.

[1] 1998 (6) ALD 246 (DB)